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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,962	11/25/2003	Robert M. Herrin	7703.26	5936

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CARL M. NAPOLITANO, PH.D.  
ALLEN, DYER, DOPPELT, MILBRATH & GILCHRIST, P.A.  
255 SOUTH ORANGE AVE., SUITE 1401  
P.O. BOX 3791  
ORLANDO, FL 32802-3791

EXAMINER

HARMON, CHRISTOPHER R

ART UNIT PAPER NUMBER

3721

DATE MAILED: 10/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/721,962

Applicant(s)

HERRIN, ROBERT M.

Examiner

Gene Kim

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 8/26/2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 - 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tharpe, Jr et al.

Tharpe, Jr et al show an apparatus comprising a platen 212, a forming rails 210, a first folding arm 218, compression plate 400 with fixed plate 420 that forms a passage there between and a second folding arm 412 for biasing against the portion of the formed tray through the passage. The in-feed conveyor is read on conveyor 16. Since conveyor 16 is a horizontal conveyor, the conveyor will hold a surface of the blank against a surface of the conveyor. Drive pneumatic means 220 are used for driving the platen from a first position above the blank to a biasing position for the initial folding position. The plate 212 has a rectangular portion to fold the front and rear panels fsl, rsl perpendicular to front and rear panels fl, rl. Tharpe, Jr et al show folding rails 226, 230, 210, 228 as shown in figure 11 to fold the side portions, end portions and edge portions as claimed. The locking arm is read on element 60. Inherently, the drive devices must have some controller to synchronize the movements. Tharpe, Jr et al also show adhesive applying means 310 as claimed. The frame as claimed is read on elements 412. Regarding claims 15-16, 18, 19, the examiner notes that expressions relating the apparatus to

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contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim. See ex parte Thibault, 164 USPQ 666, 667 (Bd App. 1969). Furthermore, inclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims. In re Young, 75 F.2d 996, 25 USPQ 69 (CCPA 1935) (as restated in In re Otto, 312 F.2d 937, 136 USPQ 458, 459 (CCPA 1963) Regarding newly amended limitation of the first folding arm being positioned proximate the distal portion of the forming rail and downstream the proximal portion, the folding arm 218 of Tharpe, Jr et al comprise of means 226, 228, 230. Examiner interprets second downstream element 228 as being the first folding arm that is downstream forming rail 210 as shown in figs 1, 11. The biasing effect is created with pressing platen 212. Tharpe, Jr et al is creating the partial folding with the movement of the platen with folding means 218. Tharpe, Jr et al do not disclose whether or not element 228 is movably positioned as claimed; however, Tharpe, Jr et al show the second folding arm 412 as being moveable to create folds. It would have been obvious to one of ordinary skill in the art to make the first arm 228 moveable in Tharpe, Jr et al as taught by the second folding arm in Tharpe, Jr et al as a matter of engineering design choice to create a desired fold if element 212 <sup>were</sup> ~~was~~ not moveable. Tharpe, Jr et al do not show beveled edges as claimed or a surface with depressions as claimed. However, the examiner takes official notice that it is well known in the art to use beveled edges or to have a surface with depressions for reducing the frictional contacting surface. As examiner already took official notice on this matter in a previous office

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action and since applicant did not traverse the official notice assertion, this is admitted as prior art in accordance with MPEP 2144.03(c).

3. Applicant's arguments with respect to claims *supra* have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gene Kim whose telephone number is 571 272-4463.

The examiner can normally be reached on Monday to Thursday 7 a.m. to 5 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gene Kim  
Primary Examiner  
Art Unit 3721